

DECISION



19394 Eaton
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204380

DATE: September 4, 1981

MATTER OF: Langfur Construction Corporation

DIGEST:

1. GAO will not review allegation that bidder lacks place of business in state where contract is to be performed when solicitation merely requires contractor to certify that it maintains place of business and is regularly engaged in construction or has made all necessary arrangements for entering into construction activity. Whether such arrangements are necessary or have been made is matter of bidder responsibility, and GAO does not review affirmative determinations of responsibility unless protester shows that agency failed to apply definitive responsibility criteria or presents evidence of fraud by procuring officials.
2. GAO will not review allegation that bidder lacks local licenses when solicitation contains only general requirements that contractor have all required licenses. In such case, failure to possess particular license does not bar award, since matter is between contractor and licensing authority.
3. Absent finding of nonresponsibility, below-cost bid provides no reason to challenge award of contract.

Langfur Construction Corporation protests the proposed award of a contract for elevator renovation by the Veterans Administration Medical Center in Denver,

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Colorado, to Elevator Industries, Inc., the apparent low bidder under solicitation No. 554-16-81. We are dismissing the protest because it involves issues which our Office generally does not review.

The protest deals with Elevator Industries' alleged lack of (1) a place of business and state authority to do business in Colorado, and (2) local licenses necessary to install and maintain elevators in Denver. Langfur argues that this should disqualify the firm both under the Federal Procurement Regulations (FPR) and the solicitation terms, which state that the bidder's signature on the bid "shall be deemed to be a certification by the bidder that [he is]:

"a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration, or repair of buildings, * * * or

"if newly entering into a construction activity, has made all necessary arrangements for personnel, construction equipment, and required licenses * * *."

In addition, Langfur alleges that Elevator Industries cannot possibly obtain the trained personnel, necessary facilities, and assembled units that need to be installed at its \$1.4 million bid price.

The quoted portion of the solicitation neither specifies where the contractor must be engaged in business nor limits the competition to Colorado firms. It only requires that a bidder certify that he is regularly engaged in the construction business or has made all necessary arrangements to engage in that business. Whether such arrangements are necessary or have been made concerns the firm's ability to perform the work in question, and thus is a matter of responsibility.

Before awarding the contract to Elevator Industries, the Veterans Administration must find the firm to be a responsible concern. FPR § 1-2.407-1 (1964 ed.). Our Office does not review affirmative determinations of responsibility except where there is a showing of fraud on the part of

procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Langfur has not alleged fraud, and the solicitation provisions do not constitute definitive criteria. See generally National Ambulance and Escort Service, Inc., B-196511, November 8, 1979, 79-2 CPD 342.

As for whether Elevator Industries has or can obtain all required licenses, we have distinguished between a solicitation which requires the contractor to comply with any applicable licensing or permit requirements and one which requires a specific license. In the first instance, failure to possess a particular license is not a bar to award, since it is generally considered a matter between the contractor and the licensing authority; in the second instance, possession of the particular license listed in the solicitation is a matter of responsibility. Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132. The licensing requirement in this solicitation falls in the first category.

Finally, absent a finding of nonresponsibility, a below-cost bid provides no reason to challenge an award. Bob McDorman Chevrolet, Inc. and Jack Roach Cadillac, B-200846, B-200847, B-200847.2, B-200848, March 13, 1981, 81-1 CPD 194.

The protest is dismissed.

Harry R. Van Cleve

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Acting General Counsel